

NEW YORK CITY
DEPARTMENT OF INVESTIGATION

TO: FILE

DATE: FEBRUARY 8, 2016

FROM: [REDACTED]
ASSISTANT COUNSEL

RE: CMS NUMBER: 15-00924
CASE NUMBER: I15-015
CASE NAME: PROCUREMENT
OVERVIEW

CLOSING MEMORANDUM

The following is a summary only of information pertaining to this investigation and may not contain each and every fact learned during the course of this investigation.

ORIGIN OF CASE AND NATURE OF ALLEGATION:

The Office of the Inspector General (OIG) for the New York City Housing Authority (NYCHA) initiated a proactive investigation into various aspects of NYCHA's procurement process. In 2014, NYCHA awarded contracts in excess of \$329 million for construction related work.

RESULTS OF INVESTIGATION:

Overview of the Procurement Process

In December of 2014, the United States Office of Management and Budget (OMB) issued new regulation 2 C.F.R. Part 200, in an effort to streamline language from eight different OMB circulars and provide one uniform standard for procurement procedures. On June 24, 2015, NYCHA revised its procurement procedure and issued Contract Procedure Resolution (CPR) - General Procurement Policy, to comply with the new federal regulations.

Procurement Types

A review of 2 CFR 200 and NYCHA's CPR revealed six different methods by which an item or contract can be procured:

- 1) **Micro Purchases** - Contracts that require no price quotes and are for purchases of \$5,000 or less.
- 2) **Small Purchases** - Purchases greater than \$5,000 and up to \$150,000, which are often referred to as three bids and a buy. They are advertised and require at least three bids.
- 3) **Sealed Bids** - Contracts greater than \$150,000. They require advertisement, a sealed bid, and NYCHA generally awards to the lowest responsive and responsible bidder.
- 4) **Procurement by Proposal** - This method is used when conditions are not appropriate for a sealed bid and the contract will exceed the small purchases threshold. This type of procurement

is most commonly used for professional services such as transcription services, construction management services, and architectural / engineering contracts.

- 5) **Sole Source** - Specialized contracts for either a unique vendor or item where there is no competitive market available.
- 6) **Emergency Contracts** - Contracts that occur due to an emergency and cannot go through normal procurement methods.

Procurement Procedures

The OIG reviewed NYCHA's CPR policies and procedures to verify that they comply with 2 C.F.R. Part 200. Additionally, the OIG obtained records from the NYCHA Procurement Department of a breakdown of all expenditures for the six different types of procurement methods for the time period of January 1, 2015 through November 20, 2015. The OIG then reviewed the datasets in conjunction with NYCHA's policies and procedures and identified several areas of potential vulnerabilities.

Micro Purchases

A review of the data revealed that NYCHA expended \$54 million in micro purchases in the reviewed time period. NYCHA classifies micro purchases as any contract for less than \$5,000. These contracts require no price quotes, are for purchases of \$5,000 or less, and must be distributed equitably among qualified suppliers.

Out of a total of 1,512 vendors, 17 had amassed contracts that aggregated in excess of \$500,000 and this subset of vendors accounted for 33% of all micro purchases. The OIG conducted a cursory review into the 17 vendors and found two companies that reported on their Vendex submissions annual gross revenue of under \$100,000, whereas NYCHA records demonstrated that these two companies had contracts with NYCHA that far exceed this threshold. One of the two companies with inaccurate Vendex submissions, [REDACTED]

[REDACTED] A review of the type of purchases made revealed that a large portion of these purchases are for painting and tiling of NYCHA apartments, where the NYCHA development property manager has the autonomy to choose the vendor.

The OIG spoke with Joe Schmidt (Schmidt), the director of NYCHA's Procurement Department, who informed the OIG that NYCHA is beginning to transition away from micro purchase contracts and toward a greater use of requirement contracts, in an attempt to prevent a small field of vendors from monopolizing micro purchase work at NYCHA. NYCHA believes that this new process will reduce opportunities for NYCHA staff to conspire with vendors.

According to Schmidt, the Procurement Department currently composes a monthly report of all micro purchases to look for patterns or suspicious activity. If Procurement staff spots suspicious activity, he or she will reject the micro purchase request and will instruct the requesting department to solicit three competitive bids. However, no examples were provided and the OIG was informed that micro purchases are very rarely rejected. Additionally, Procurement has identified potential vulnerabilities and is implementing a four phase plan to reduce the number of small procurement contracts and instead

initiate requirements contracts. However, the use of micro purchases cannot be completely eradicated because some requests for services or materials are needed infrequently, such that a requirements contract would not be feasible.

The OIG has identified the following corruption hazards for micro purchases:

- 1) one vendor or a small pool of vendors monopolizing micro purchases;
- 2) NYCHA staff conspiring with vendors to steer contracts to a preferred vendor, or engage in other corrupt contracting practices.

Sealed Bids

The procurement method of awarding contracts through sealed bids focuses on awarding contracts to the 1) lowest 2) responsive and 3) responsible bidder, as identified in NYCHA CPR§109(b)(3)(D).

A review of the data by the OIG indicates that NYCHA procured over \$769 million in contracts via sealed bids. Per NYCHA's CPR, the sealed bid method emphasizes the cost of the bid; therefore the term "lowest" refers to the bid which was the lowest or closest to the projected cost estimate. The term "responsive" refers to the vendor's ability to comport with the requirements listed in the bid solicitation, including submitting the bid on time, submitting the bid at the proper location, submitting the bid in the proper format, and including a bid bond. The term "responsible" refers to consideration of items such as: a contractor's integrity, compliance with public policy, record of past performance, and financial and technical resources. See CFR §200.318(h).

According to [REDACTED], a project administrator in the Procurement Department, the sealed bid process is initiated when the requesting NYCHA department notifies the Procurement Department of a contract to be awarded. Procurement subsequently notifies the City Record, where the bid solicitation is published 21 days prior to the bid opening. In 2009, NYCHA implemented I-Supplier, a web-based application that provides self-service capabilities to suppliers, including bidding. I-Supplier Portals' Sourcing Supplier menu option is designed to provide vendors with remote access to bid status and forms and documents pertaining to the bid.¹

[REDACTED] informed the OIG that as bids are received by Procurement, they are kept in a sealed envelope and are date-stamped and time-stamped, and kept in a file cabinet in a locked office. At the public bid opening, NYCHA has at least three procurement employees present (one to read the bids, one to record the bids, and one supervisor) and one designee from the requesting NYCHA department. Once all the bids have been opened, the bid recorder notifies various NYCHA stakeholders via e-mail of the bid results.² The e-mail notification from NYCHA states the contract name and number; time for

¹ However, NYCHA's I-Supplier system currently does not have the capacity to track who downloads a bid. Consequently, NYCHA cannot use I-Supplier to distribute addenda to all parties who have picked up bid documents.

² The following departments are notified of the bid results: OIG, Financial Planning, Resident Engagement, CPD, Design, and Procurement.

completion of the project; bid date and time; development name; the requesting NYCHA department; the amount of the cost estimate; and the names and prices of the three lowest bidders.³

After the bid opening, the requesting NYCHA department reviews the bids and selects the vendor within two days from the bid opening. An email is sent to the director of Procurement to initiate Procurement's process of formatting Bid Tabs, and notifying the OIG to initiate a Vendor Name Check and subcontractor approvals. NYCHA's Capital Projects Division (CPD) often requires that the lowest bidder come in to review the contractor's qualifications, the bid proposal, and ensure that the contractor understands the scope of work. CPD will then prepare and submit a recommendation memo to the Vice-President of CPD, which is forwarded to the Executive Vice-President of CPD for approval and signature. A signed recommendation memo is prepared by CPD's Special Administrator who then prepares a NYCHA Board briefing memo and resolution for the NYCHA Board calendar meeting.

NYCHA can elect to refuse to award a contract to the lowest responsive bidder for the following reasons:

- The contractor has been selected for too many awards and there is a concern that the contractor does not have the capacity to complete the project;
- The bid submitted is unrealistically low. This occurs when the cost estimate and the bid estimate differ greatly, which would indicate that the contractor did not fully comprehend the scope of work being solicited;
- There is not a sufficient response to the bid or there is only a sole bidder; or
- The lowest bid is too high and deviates too far from NYCHA's proposed cost estimate.

The OIG has identified the following corruption hazards:

- 1) bid collusion - two or more vendors colluding to artificially inflate or deflate bid estimates;
- 2) some potential bidders not receiving addenda, due to limitations on NYCHA procurement software, and being automatically deemed nonresponsive for failing to comply with the bidders' requirements.

Procurement by Proposal

A review of the data revealed that NYCHA procured over \$326 million in contracts via the use of a Request for Proposal (RFP). This method is used when conditions are not appropriate for a sealed bid and the contract will exceed the small purchases threshold. An adequate number of qualified sources must be solicited and the responsible firm whose proposal is most advantageous to NYCHA will be

³ The OIG has already made a recommendation to NYCHA regarding NYCHA's projected cost estimate. Specifically, the OIG noticed that some of the cost estimates did not contain critical information such as the date the estimate was performed or the name of the estimator, both critical factors to know in the event that bid fraud or collusion may have occurred. NYCHA has since implemented the OIG's recommendation to ensure that all cost estimates contain this information.

selected. The vast majority of these contracts are for construction management, and architectural and engineering services.

The OIG spoke with [REDACTED] Interim Vice-President of Supply Management and was informed that the Procurement Department has a "Road Map" for the RFP process which is the current standard that all RFP's must follow. According to [REDACTED] the Road Map incorporates the United States Department of Housing and Urban Development's (HUD) regulations pertaining to publicizing and soliciting RFPs. The OIG reviewed the document referred to as the Road Map and found that it does provide clear direction on the process an RFP solicitation must follow. However, the Road Map does not provide any instructions on evaluating RFPs or factors an evaluator should consider while evaluating an RFP. [REDACTED] also informed the OIG that NYCHA requires all individuals chosen to sit on RFP selection committees to review and acknowledge an online PowerPoint presentation regarding selection committee standards.

The OIG also reviewed the PowerPoint presentation which illustrates the factors that should be considered when reviewing a proposal. [REDACTED] has informed the OIG that NYCHA is now currently revising its Standards and Procedures for Procurement and that the new procedure will encompass information contained in both the Road Map and the RFP PowerPoint presentation.

The OIG has identified the following corruption hazards:

- 1) lack of uniformity and written procedure for RFP selection committee composition;
- 2) vague standards for selection.

Emergency Contracts

NYCHA's procedure for emergency contracts specifies that where an emergency exists⁴ and there is an immediate need for supplies, services, or construction, the normal procurement methods may be waived. If the emergency contract is in excess of \$25,000, the requesting department must prepare a memorandum explaining why such action is in the best interest of NYCHA, at which point an Exemption Certificate may be issued by the General Manager or his designee, upon approval by an Opinion of General Counsel.

A review of the procurement data by the OIG revealed that NYCHA entered 21 emergency contracts, totaling \$ 6,756,375. However, a search of NYCHA's internal database called CPD Data Warehouse revealed that NYCHA failed to enter these contracts and thus the database reflected zero emergency contracts for 2015.

⁴ NYCHA defines an emergency as an event that would seriously "threaten the public health, welfare, or safety, or seriously and adversely affects a necessary service, or endangers property, or would otherwise cause serious damage to the Authority, including without limitation emergencies arising by reason of fire, flood, earthquake, epidemic, riot, or equipment or structural failure." NYCHA Standard Procedure 060:88:2.

According to NYCHA's Capital Projects Standard Procedure: Emergency Work Procedure (SP 060:88:2), the program director of the emergency project and procurement administrator are authorized to prepare a list of approved contractors for solicitation of emergency bids. There is no requirement for public bid or advertisement of these contracts. Per NYCHA standards, the contractor must have a proven track record of quality performance and integrity, in order to be considered for the approved vendor list. However, in October 2015, a \$5 million emergency contract was awarded to Parsons Construction Inc., a corporate entity that had no prior business dealings with NYCHA, and it is unclear why the company was placed on the approved emergency vendor list.

The OIG has identified the following corruption hazards:

- 1) the potential to steer emergency jobs to unqualified vendors, or preferential vendor treatment;
- 2) a lack of transparency pertaining to how a vendor is selected to be placed on the approved vendor emergency contracts list.

CONCLUSIONS AND RECOMMENDATIONS:

The OIG conducted a review of NYCHA's Contract Procedure Resolution and concluded that NYCHA is in compliance with 2 C.F.R. Part 200 procurement regulations. The OIG's investigation determined that NYCHA is taking additional measures to prevent a small group of vendors from monopolizing micro purchases, and is creating a standard procedure that will encompass RFP procedures. However, the OIG has identified several areas which warrant implementation of additional measures and safeguards.

Regarding micro purchases, NYCHA should remain vigilant with its screening process to ensure contracts are being distributed equitably among qualified suppliers.

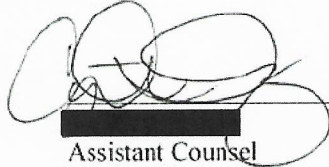
Based on the above, the OIG makes the following Policy and Procedure Recommendations:

- NYCHA should ensure that Procurement staff is trained once a year on bid-rigging prevention;
- NYCHA should implement a method of tracking who downloads bid packages to ensure that all parties who download a bid package are notified of addenda to the bid posting;
- Staff who will be participating in reviewing proposals should be given a refresher as to RFP procedures and selection guidelines once a year;
- NYCHA should include a corruption prevention component to their RFP PowerPoint Presentation;
- In order to enable tracking and transparency, CPD should ensure that CPD's Data Warehouse is updated monthly.

- NYCHA should amend SP 060:88:2, page 7, Section IV(G)(2), to ensure that all vendors on an approved emergency vendor list have had previous contracts *with NYCHA*, and received positive evaluations.

The OIG will continue to monitor NYCHA's procurement procedures and practices. It is recommended that these findings be referred to NYCHA. It is further recommended that this investigation be closed.

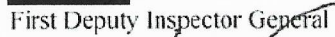
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